

UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Pat Wood, III, Chairman;  
Nora Mead Brownell, Joseph T. Kelliher,  
and Suedeen G. Kelly.

California Department of Water Resources

Project No. 2100-129

ORDER DENYING REHEARING

(Issued January 21, 2005)

1. In this order we deny Mr. Lyle Wright's request for rehearing of an order denying licensee California Department of Water Resources' application to amend its recreation plan for its 762-megawatt Feather River Project No. 2100 in Butte County, California.<sup>1</sup> This order is in the public interest as it serves to clarify the Commission's authority over management of recreational resources within licensed projects.

**Background**

2. The Commission issued the current license for the Feather River Project in 1957.<sup>2</sup> The license will expire on January 31, 2007. Within and adjacent to the project boundary are approximately 67 miles of trails for hikers, equestrians, and mountain bicycles

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<sup>1</sup> 108 FERC ¶ 62,164 (2004).

<sup>2</sup> 17 FPC 262. The project is located on the Feather River 130 miles northeast of San Francisco in the foothills of the Sierra Nevada mountain range about five miles from the city of Oroville, California. A primary purpose of the project's reservoir, Lake Oroville, is to supply water to various municipalities for consumption and irrigation as part of the California State Water Project, a 600-mile long system of storage and conveyance facilities.

managed by the California Department of Parks and Recreation (California DPR) in cooperation with the licensee as part of the Lake Oroville State Recreation Area (LORSA).<sup>3</sup> Approximately 44 miles of these trails lie within and are part of the project.

3. On September 22, 1994, the Commission approved a revised recreation plan for the project.<sup>4</sup> The plan provides for three equestrian/hiker trails (totaling about 17.5 miles) of varying lengths and degrees of difficulty, and a 35-mile loop mountain bike trail.<sup>5</sup> The revised recreation plan in addition established the Oroville Recreation Advisory Committee (ORAC) to help the licensee determine the need for additions and improvements to existing recreational facilities in the project area.

4. On February 6, 2002, California DPR announced that beginning in the spring of 2002, all trails within the LORSA, including trails within the Feather River Project not otherwise posted, would be reclassified as shared-use to allow hiking, biking, and equestrian uses on the same trails. On November 26, 2002, after receiving hundreds of letters for and against California DPR's trail use reclassification, the Commission staff informed the licensee that California DPR's trail use reclassification was not authorized by the project's recreation plan. Staff accordingly directed the licensee to convert all project trails back to the uses authorized under the 1994 revised recreation plan.

5. On April 4, 2003, after meetings with ORAC and interested persons and entities, the licensee filed with the Commission an application for amendment of its license to modify the recreation plan to allow shared use of trails within the project. The Commission issued public notice of the application on March 9, 2003. Several individuals and entities timely intervened in the proceeding.

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<sup>3</sup> Licensees under Commission regulations are expected to encourage governmental agencies and private interests to assist in carrying out plans for operation and maintenance of recreational areas. See 18 C.F.R. § 2.7(d) (2004).

<sup>4</sup> 68 FERC ¶ 61,358 (1994).

<sup>5</sup> *See* "Proposed Amended Recreation Plan for Lake Oroville State Recreation Area," filed June 1, 1993, at 15, 36, 38, 41, and 45. The loop trail was completed in 1996, but was later lengthened by six miles.

6. On August 17, 2004, the director of the Commission's Division of Hydropower Administration and Compliance (Director) issued an order denying the amendment application as unwarranted in light of current recreational needs and the pending expiration of the project license on January 31, 2007.<sup>6</sup> On September 14, 2004, intervenor Mr. Lyle Wright timely requested rehearing of the Director's order.

### **Discussion**

7. Mr. Wright argues that no Commission approval is needed to convert the project trails to multiple uses. He is mistaken. As noted above, the 1994 revised recreation plan explicitly provides for separate trails for mountain bikes and for equestrians and hikers, and any change to those designations thus requires prior Commission approval.<sup>7</sup>

8. Mr. Wright next argues that the Commission should defer to California DPR with respect to management of project trails. The Commission may not, as Mr. Wright suggests, defer to California DPR in determining appropriate use of project trails. Federal law vests in the Commission exclusive authority over licensing and regulation of the project, except for the right of states to determine vested property rights in water necessary to operate a project.<sup>8</sup> Under this scheme, the licensee is ultimately responsible for all license-required recreation facilities and opportunities, while the Commission reviews all proposed non-project uses of project lands and waters and determines which uses are matter for state or local control.

9. Mr. Wright further argues that the Director's order was based on an inadequate EA. Specifically, Mr. Wright contends that the EA addresses the interests of equestrians and ignores the recreation plan amendment's potential impact to cyclists.

10. That the decision as to the appropriate use of the project's trails may be unfavorable to cyclists does not mean that the EA was biased or ignored potential impacts to all recreation groups. The EA and the order noted that the project area currently offers a balance of recreational opportunities for trail users, with approximately 25 miles of

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<sup>6</sup> Inasmuch as portions of the bike trails are not paved, the order also corrected the recreation plan by deleting a sentence stating that mountain bikes were to be restricted to paved roads.

<sup>7</sup> See n.5, *supra*. The reclassification without prior Commission approval therefore constituted a violation of the license.

<sup>8</sup> See *California v. FERC*, 495 U.S. 490 (1990)

equestrian- and hiker-only trails and more than 47 miles of mountain bicycle trails.<sup>9</sup> The order concluded that conversion of any existing project trails to shared use for the remaining license term is not warranted. To the contrary, maintaining trails within the project for use only by equestrians and hikers offers a unique recreational experience worthy of preservation. In addition, shared use of trails increases safety concerns and user conflicts, and necessitates additional trail maintenance and modification measures. We find the order's conclusion to be reasonable and the EA on which it was based to be adequate.

11. As noted above, the license for the Feather River Project will expire in less than three years.<sup>10</sup> The Director's decision to maintain restrictions against shared use of certain project trails is for the remaining term of this license and is not meant to prejudge the merits of any proposals for shared use of project trails that may be proposed in any relicensing proceeding for the project. During the expected relicensing proceeding, the Commission will fully consider, after a comprehensive environmental analysis of the entire project and input from public and private entities representing all recreation users, the long-term need for shared use of trails within the project over the term of the project's new license.

The Commission orders:

The request for rehearing filed by Lyle Wright on September 14, 2004, in this proceeding is denied.

By the Commission.

( S E A L )

Linda Mitry,  
Deputy Secretary.

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<sup>9</sup> 108 FERC at P17.

<sup>10</sup>Under the Commission's regulations, any application to relicense the project must be filed by January 31, 2005.